

**AMENDMENT NO. 1 TO
INTERLOCAL AGREEMENT REGARDING INCREASED HILLSIDE RUNOFF IN
THE MARSHLAND DRAINAGE BASIN DUE TO UPLAND DEVELOPMENT**

THIS AMENDMENT NO.1 TO INTERLOCAL AGREEMENT REGARDING INCREASED HILLSIDE RUNOFF IN THE MARSHLAND DRAINAGE BASIN DUE TO UPLAND DEVELOPMENT (the "First Amendment") is made and entered into this 18th day of September, 2017, by and among SNOHOMISH COUNTY, of the State of Washington (the "County"), the CITY OF EVERETT, a Washington municipal corporation (the "City"), and MARSHLAND FLOOD CONTROL DISTRICT, a special purpose district formed under the authority of chapter 86.09 RCW (the "District").

RECITALS

A. The District owns and operates certain drainage and flood control facilities in the Marshland Drainage Basin which collects runoff from the upland area development. A portion of the upland area of the District is within the jurisdiction of the County and the remainder of the upland area is within the jurisdiction of the City;

B. On September 3, 2013, the County, the City and the District entered into a five-year Interlocal Agreement (Original Agreement") regarding the increased hillside runoff in the Marshland Drainage Basin due to upland development;

C. Chapter 39.34 RCW, the Interlocal Cooperation Act, authorizes public agencies, including utility districts and counties, to enter into cooperative agreements with one another to make the most efficient use of their respective resources;

D. The COUNTY, the CITY and the DISTRICT wish to amend the Interlocal Agreement to add an additional year to the term which will allow all parties to review projections prior to entering into a new five-year agreement.

NOW, THEREFORE, for and in consideration of the mutual benefits conferred on both parties, the parties agree as follows:

Section 1 Subsection 1.2 "Term" of the Original Agreement is deleted and replaced with the following:

1.1 Term

The "Term" of this Agreement shall cover the following six (6) calendar years: 2013, 2014, 2015, 2016, 2017 and 2018. The period covering the calendar years 2013 through 2017 shall be referred to in this Agreement as the "Original Term," and the period covering calendar year 2018 shall be referred to in this Agreement as the "2018 Original Term Extension." The Term shall commence on the Execution Date and expire when the true-up required by Section 10 has been performed for calendar year 2018 (the "Expiration Date"). Notwithstanding anything to the contrary contained elsewhere in this Agreement,

the County's obligations after December 31, 2013, are contingent upon local legislative appropriation of the necessary funds for this specific purpose in accordance with the Snohomish County Charter, the Snohomish County Code and applicable law. If the County does not so appropriate the necessary funds for the County's obligations under this Agreement, either the District or the City may terminate this Agreement effective on 30 days advance written notice to the other parties, but failure to provide such notice shall not be a "Default" under Section 17.

Section 2 Subsection 5.1 "County Increased Hillside Runoff Operating Cost Contributions" of the Original Agreement is amended to add the following:

PROVIDED, that during the 2018 Original Term Extension, that Payment shall be made on or before March 31, or within sixty (60) days after receiving an invoice for payment, whichever is later.

Section 3 Subsection 5.2 "City Increased Hillside Runoff Operating Cost Contributions" of the Original Agreement is amended to add the following:

PROVIDED, that during the 2018 Original Term Extension, that Payment shall be made on or before March 31, or within sixty (60) days after receiving an invoice for payment, whichever is later.

Section 4 Subsection 7.1 "Anticipated Ditch, Pond and Canal Operating Costs Attributable to Increased Hillside Runoff" of the Original Agreement is amended to add the following:

PROVIDED, that during the 2018 Original Term Extension, that approximately seventy-two and sixty-four hundredths percent (72.64%) of the District's Ditch, Pond and Canal Operating Costs will be allocable to sediment from Increased Hillside Runoff.

Section 5 Subsection 7.2 "Anticipated Pump Plant O&M Operating Costs Attributable to Increased Hillside Runoff" of the Original Agreement is amended to add the following:

PROVIDED, that during the 2018 Original Term Extension, the parties agree the currently available data, using the straight-line methodology referenced in Section 7.1 to this Agreement, demonstrate that, for 2018, twenty-three and twenty hundredths percent (23.20%) of the District's Pump Plant O&M Operating Costs will be attributable to additional surface water flow that comes into the Marshland Drainage Basin from Increased Hillside Runoff.

Section 6 Subsection 7.3 "Anticipated Pump Electricity Operating Costs Attributable to Increased Hillside Runoff" of the Original Agreement is amended to add the following:

PROVIDED, that during the 2018 Original Term Extension, the parties agree the currently available data, using the straight line methodology referenced in Section 7.1 to this Agreement, demonstrate that, for 2018, twenty-three and twenty hundredths percent (23.20%) of the District's Pump Electricity Operating Costs are attributable to additional surface water flow that comes into the Marshland Drainage Basin from Increased Hillside Runoff.

Section 7 Subsection 9.3 "Amount of Increased Hillside Runoff Pump Plant Capital Improvement Fund Contribution" of the Original Agreement is amended to add the following:

PROVIDED, that during the 2018 Original Term Extension, the parties agree as stated in Sections 7.2 and 7.3 above, currently available data demonstrate that, for 2018, twenty-three and twenty hundredths percent (23.20%) of the District's pump-related Operating Costs will be attributable to the additional surface water flow that comes into the Marshland Drainage Basin from Increased Hillside Runoff. Accordingly, the parties agree it is appropriate for the calendar year 2018, to allocate responsibility for twenty-three and twenty hundredths percent (23.20%) of the annual Pump Plant Capital Improvement Fund Contribution to the Upland Area. Twenty-three and twenty hundredths percent (23.20%) of Forty-Four Thousand One Hundred Forty Six Dollars (\$44,146) equals approximately Ten Thousand Two Hundred Forty Two Dollars (\$10,242). This amount shall be referred to as the "Increased Hillside Runoff Pump Plant Capital Improvement Fund Contribution for 2018."

Section 8 Subsection 9.4 "Amount of the County's Increased Hillside Runoff Pump Plant Capital Improvement Fund Contribution Payment" of the Original Agreement is amended to add the following:

PROVIDED, that during the 2018 Original Term Extension, the parties agree that the County's proportionate share of the Increased Hillside Runoff Pump Plant Capital Improvement Fund Contribution for 2018 shall be equal to sixty-nine percent (69%). Sixty-nine percent (69%) of Ten Thousand Two Hundred Forty Two Dollars (\$10,242) equals approximately Seven Thousand Sixty-Seven Dollars (\$7,067). Accordingly, the "County's Increased Hillside Runoff Pump Plant Capital Improvement Fund Contribution Payment" shall be equal to Seven Thousand Sixty-Seven Dollars (\$7,067).

Section 9 Subsection 9.5 "Amount of the City's Increased Hillside Runoff Pump Plant Capital Improvement Fund Contribution Payment" of the Original Agreement is amended to add the following:

PROVIDED, that during the 2018 Original Term Extension, the parties agree that the City's proportionate share of the Increased Hillside Runoff Pump Plant Capital Improvement Fund Contribution for 2018 shall be equal to thirty-one percent (31%). Thirty-one percent (31%) of Ten Thousand Two Hundred Forty Two Dollars (\$10,242) equals approximately Three Thousand One Hundred Seventy-Five Dollars (\$3,175). Accordingly, the "City's Increased Hillside Runoff Pump Plant Capital Improvement Fund Contribution Payment" shall be Three Thousand One Hundred Seventy-Five Dollars (\$3,175).

Section 10 Subsection 9.6 “Amount of the District’s Pump Plant Capital Improvement Fund Contribution” of the Original Agreement is amended to add the following:

PROVIDED, that during the 2018 Original Term Extension, the parties agree that the portion of the annual Pump Plant Capital Improvement Fund Contribution that is not allocable to the Upland Area pursuant to Section 9.3 above shall be the responsibility of the District. Specifically, the District shall be responsible for seventy-six and eighty hundredths percent (76.80%) of the annual Pump Plant Capital Improvement Fund Contribution. Seventy-six and eighty hundredths percent (76.80%) of Forty-Four Thousand One Hundred Forty Six Dollars (\$44,146) equals approximately Thirty-three Thousand Nine Hundred Four Dollars (\$33,904). Accordingly, the District’s portion of the Pump Plant Capital Improvement Fund Contribution for each calendar year during the Term of this Agreement shall be Thirty-Three Thousand Nine Hundred Four Dollars (\$33,904). The District shall pay its portion of the Pump Plant Capital Improvement Fund Contribution into the Pump Plant Capital Improvement Fund on or before November 30th of 2018.

Section 11 Subsection 11.3.2 of the Original Agreement is amended to add the following:

PROVIDED, that during the 2018 Original Term Extension, the parties agree that if any portion of the Grant Funds is used for Ditch, Pond and Canal Operating Costs, then seventy-two and sixty-four hundredths percent (72.64%) of that portion of the Grant Funds shall be deducted from the payment obligations of the County and the City for the Increased Hillside Runoff Ditch, Pond and Canal Operating Costs, according to their respective shares of the Increased Hillside Runoff Ditch, Pond and Canal Operating Costs, as calculated in Section 7.1 and Section 8 above.

Section 12 Subsection 11.3.3 of the Original Agreement is amended to add the following:

PROVIDED, that during the 2018 Original Term Extension, the parties agree that if any portion of the Grant Funds is used for Pump Plant O&M Operating Costs, then twenty-three and twenty hundredths percent (23.20%) of that portion of the Grant Funds shall be deducted from the payment obligations of the County and the City for the Increased Hillside Runoff Pump Plant O&M Operating Costs, according to their respective shares of the Increased Hillside Runoff Pump Plant O&M Operating Costs, as calculated in Section 7.2 and Section 8 above.

Section 13 Subsection 11.3.4 of the Original Agreement is amended to add the following:

PROVIDED, that during the 2018 Original Term Extension, the parties agree that if any portion of the Grant Funds is used for Pump Electricity Operating Costs, then twenty-three and twenty hundredths percent (23.20%) of that portion of the Grant Funds shall be deducted from the payment obligations of the County and the City for the Increased Hillside Runoff Pump Electricity Operating Costs, according to their respective shares of

the Increased Hillside Runoff Pump Electricity Operating Costs, as calculated in Section 7.3 and Section 8 above.

Section 14 Section 19 NOTICES of the Original Agreement is deleted and replaced with the following:

19. NOTICES

Each notice, demand, request, consent, approval, disapproval, designation or other communication that is permitted or required to be given by one party to another party under this Agreement shall be in writing and shall be given or made or communicated by (i) United States registered or certified mail, postage prepaid, return receipt requested, (ii) any nationally recognized overnight carrier or express mail service (such as FedEx or DHL) that provides receipts to indicate delivery, (iii) by personal delivery, (iv) by facsimile (with proof of successful transmission) or by email (with a request for and receipt of proof of successful transmission). All such communications shall be addressed to the appropriate Administrator of this Agreement as follows:

To the County:

Snohomish County
Department of Public Works
Surface Water Management Division
3000 Rockefeller Avenue, M/S 604
Everett, WA 98201
Attention: Gregg Farris,
SWM Planning Manager
Telephone: (425) 388-6454
Facsimile: (425) 388-6455
Email: GFarris@snoco.org

To the City:

The City of Everett
Public Works Department
Surface Water Section
3200 Cedar Street
Everett, WA 98201
Attention: Heather Griffin,
Surface Water Manager
Telephone: (425) 257-8889
Facsimile: (425) 257-8882
Email: HGriffin@everettwa.gov

To the District:

Marshland Flood Control District
125 Union Avenue
P.O. Box 85
Snohomish WA 98291-0085
Attention: Gary Brandstetter, Sec/Mgr
Telephone: (360) 568-6044 and/or (425) 760-4262
Facsimile: None
Email: marshlandfloodcontrol@gmail.com

Any party hereto may, by reasonable notice to the other parties, designate such other address, facsimile telephone number or email for the giving of notices as deemed necessary. All notices shall be deemed given on the day each such notice is personally delivered, transmitted by facsimile (with evidence of receipt), or delivered by overnight

courier service, or on the third business day following the day such notice is mailed if mailed in accordance with this Section, or on the same day as the day such notice is emailed if emailed in accordance with this Section.

For email delivery, the following receipt of proof of successful transmission shall be deemed acceptable:

A mutually agreeable delivery receipt message agreed to in writing (using the methods in this section) by the Administrators of this Agreement; or,

Using Microsoft Outlook®, any of the following delivery receipt messages:

“Your message has been delivered to the following recipients: (name and email of recipient(s));” or,

“Delivery to these recipients or groups is complete, but no delivery notification was sent by the destination server: (name and email of recipient(s)).”

Section 15 Subsection 20.10 “Exhibits” of the Original Agreement is amended to add the following

EXHIBIT G - Calculation Sheet for Anticipated Cost and True-Upping

Section 16 Amended Exhibit F, attached hereto and by this reference made part of the original Agreement, replaces Exhibit F that was attached to and made part of the Original Agreement.

Section 17 Exhibit G, “Calculation Sheet for Anticipated Cost and True-Upping”, is attached hereto and by this reference made part of the Original Agreement.

Section 18 All other terms and conditions of the Original Agreement shall remain in full force and effect except as expressly modified by this First Amendment.

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment as of the day and year first written above.


COUNTY:

Snohomish County, a political subdivision of the State of Washington

By 
Name: KEN KLEIN
Title: Executive Director


DISTRICT:

Marshland Flood Control District, a special purpose district formed under the authority of chapter 86.09 RCW

By 
Name: DON BAILEY
Title: Chairperson of District Commissioners


Approved as to Form:


 7/19/17
Deputy Prosecuting Attorney

By 
Name: Margaret Thomas
Title: District Commissioner

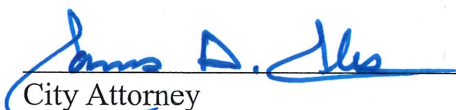
CITY:

City of Everett, a Washington municipal corporation.

By 
Name: Tim Stocker
Title: District Commissioner

By 
Name: Ray Stephanson
Title: Mayor

Approved as to Form:


City Attorney

Approved as to Form:

Attorney for the District

Attest:


City Clerk

AMENDED EXHIBIT F
Percentage of Pump-Related Operating Costs Allocable to Hillside Runoff Based Upon
"Peaking Factor"

For purposes of this Agreement, the parties agree the currently available data, using straight-line projection, demonstrate that an average of approximately thirteen and sixty-five hundredths percent (13.65%) of the District's pump-related Operating Costs are attributable to additional surface water flow that comes into the Marshland Drainage Basin from Increased Hillside Runoff. However, the parties also agree that using that straight-line percentage does not appropriately allocate a sufficient portion of the District's pump-related Operating Costs to the Increased Hillside Runoff. This is because the additional surface water flow from the Increased Hillside Runoff is not distributed within the Marshland Drainage Basin in an even manner, but instead tends to impact the Marshland Drainage Basin via high peak flows during storm events. During recent years, the District has increasingly needed to operate additional pumps during storm events due to the peak volume of Increased Hillside Runoff flowing into the Marshland Drainage Basin. Operating additional pumps causes additional wear and tear on the pumps. Additionally, the high electrical demands of operating additional pumps, especially the large 250 hp pumps, results in disproportionately higher electrical costs for the District. To account for the disproportionate increase in Pump Plant O&M Operating Costs and Pump Electricity Operating Costs caused by the Increased Hillside Runoff, the parties agree, based on currently available data from the PUD that it is appropriate to apply a peaking factor of one point six (1.6) to the straight-line percentage set forth above in order to derive an equitable percentage allocation of the total pump-related Operating Costs to the Increased Hillside Runoff. Multiplying the straight-line percentage of thirteen and sixty-five hundredths percent (13.65%) by the 1.6 peaking factor results in a proportionate share of twenty-one and eighty-four hundredths percent (21.84%). Accordingly, the appropriate proportion of the District's pump-related Operating Costs to allocate to the Increased Hillside Runoff is twenty-one and eighty-four hundredths percent (21.84%) which the Parties shall round-off to 21.85% for the terms of this Agreement.

PROVIDED, that for the calendar year 2018, during the 2018 Original Term Extension, the parties agree that the currently available data, using straight-line projection, demonstrate that an average of approximately fourteen and fifty hundredths percent (14.50%) of the District's pump-related Operating Costs for 2018 will be attributable to additional surface water flow that comes into the Marshland Drainage Basin from Increased Hillside Runoff. However, the parties also agree that using that straight-line percentage does not appropriately allocate a sufficient portion of the District's pump-related Operating Costs to the Increased Hillside Runoff. Accordingly, for the reasons stated in paragraph 1 of Exhibit F, to account for the disproportionate increase in Pump Plant O&M Operating Costs and Pump Electricity Operating Costs caused by the Increased Hillside Runoff, the parties agree, based on currently available data from the PUD

that it is appropriate to apply a peaking factor of one point six (1.6) to the straight-line percentage set forth above in order to derive an equitable percentage allocation of the total pump-related Operating Costs to the Increased Hillside Runoff. Multiplying the straight-line percentage of fourteen and fifty hundredths percent (14.50%) by the 1.6 peaking factor results in a proportionate share of twenty-three and twenty hundredths percent (23.20%). Accordingly, the appropriate proportion of the District's pump-related Operating Costs to allocate to the Increased Hillside Runoff for 2018 is twenty-three and twenty hundredths percent (23.20%).

Agreement

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

#8

PROJECT TITLE:

Amendment No. 1 to the
Interlocal Agreement
Regarding Increased Hillside
Runoff in the Marshland Basin
Due to Upland Development
providing a one year extension

X

Briefing
Proposed Action
Consent
Action
First Reading
Second Reading
Third Reading
Public Hearing
Budget Advisory

COUNCIL BILL #

Originating Department

Contact Person

Phone Number

FOR AGENDA OF

Public Works

Jim Miller

425-257-8880

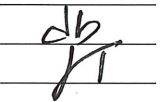
October 11, 2017

Initialed by:

Department Head

CAA

Council President

**Location**

Southwest Everett

Preceding ActionOriginal Interlocal
Agreement, 2012**Attachments**

Amendment No. 1

Department(s) Approval

Legal, Public Works

Amount Budgeted	\$32,000	
Expenditure Required	30,000	Account Number(s):401-5600-123-921-494
Budget Remaining	2,000	
Additional Required	-0-	

DETAILED SUMMARY STATEMENT:

Starting in 1999, the City has entered into interlocal agreements (ILAs) with the Marshland Flood Control District to accommodate the increased hillside runoff into the District due to upland development inside the city limits. In 2012, this was expanded into a tri-party ILA by including Snohomish County, which also contributes increased runoff to the Marshland District. This was a 5-year ILA covering 2013-17. At this time, the parties have agreed to amend this agreement to extend it one more year while the formulas in the agreement are reviewed for accuracy and fairness.

RECOMMENDATION (Exact action requested of Council):

Authorize the Mayor to sign Amendment No. 1 to the Interlocal Agreement regarding increased hillside runoff in the Marshland Basin due to upland development providing a one year extension.

10-11-17
Council Approval
J.P.